

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

BOBBY RAWLINGS
Plaintiff,

v.

STATE FARM LLOYDS,
Defendant.

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CIVIL ACTION NO. 6:16-cv-00359

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(b) (DIVERSITY)**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant State Farm Lloyds (“Defendant”) and hereby petitions this Court pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446 for removal, on the basis of diversity of citizenship jurisdiction, to the United States District Court for the Western District of Texas, Waco Division, of the action numbered and styled Cause No. 2016-2982-4; *Bobby Rawlings v. State Farm Lloyds*; In the 170th Judicial District Court, McLennan County, Texas (the “State Court case”), and in support thereof would respectfully show this Court as follows:

I. FACTS

1. Plaintiff filed his Original Petition (“Petition”) in the State Court case on August 15, 2016. A true and correct copy of the Original Petition is attached hereto as part of Exhibit A. In his Original Petition, Plaintiff has asserted claims for negligence, breach of contract, prompt payment act claims, common law bad faith claims and violations of the DTPA and Texas Insurance Code.

2. Plaintiff served Defendant through its registered agent with citation and a copy of his Petition in the State Court case on August 22, 2016. This Notice of Removal is filed within thirty (30) days of service of the Petition, in compliance with 28 U.S.C. § 1446(b).

3. Plaintiff is a citizen and resident of the State of Texas.

4. Defendant State Farm Lloyds, an unincorporated association of underwriters, is a citizen of Illinois. None of the underwriters are citizens of the State of Texas. The citizenship of an unincorporated association is determined solely by the citizenship of its members. See *Ponton v. Allstate Texas Lloyds*, No. H-10-4842, 2011 WL 2837592 (S.D. Tex. Jul 18, 2011).

II. AMOUNT IN CONTROVERSY

5. Plaintiff's petition seeks monetary relief over \$100,000.00. See Petition at p 1. Plaintiff further alleges that State Farm underpaid Plaintiff's insurance claim, and refused to issue a full and fair payment for the alleged loss. See Petition at p. 3. Plaintiff alleges that State Farm acted intentionally when it failed to investigate his claim properly and refused to pay for obviously covered damages. See Petition at p. 4. Plaintiff seeks consequential damages, as well as an award of treble damages of all of the foregoing damages as well as attorney's fees in an amount more than \$200,000.00, but less than \$1,000,000.00. See Petition at ps. 19-29. Plaintiff's allegations seeking contractual and extra-contractual damages, statutory damages, (including treble damages) allegations and attorneys' fees recoverable by statute are considered in determining the amount in controversy. *H&D Tire &Automotive-Hardware, Inc. v. Pitney Bowes, Inc.*, 227 F.3d 326, 330 (5th Cir. 2000).

III. COMPLETE DIVERSITY EXISTS

6. This action is a civil action which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §§ 1441(b) and 1332(a) in that it is between citizens of different states and it is a civil action wherein the matter in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs.

IV. PROCEDURAL REQUIREMENTS

7. By virtue of filing this Notice of Removal, Defendant does not waive its right to

assert any motions to dismiss, including Rule 12 motions permitted by the Federal Rules of Civil Procedure.

8. All of the papers on file in the State Court case at the time of removal are attached hereto as Exhibit A. Those papers include the citation, Plaintiff's Original Petition, the State court docket sheet, and all answers on file.

9. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice will be given to all adverse parties promptly after the filing of this Notice.

10. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the District Clerk of McLennan County, Texas promptly after the filing of this Notice.

WHEREFORE, PREMISES CONSIDERED, Defendant State Farm Lloyds requests that this action be removed from the 170th Judicial District Court of McLennan County, Texas to the United States District Court for the Western District of Texas, Waco Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

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STATE FARM LLOYDS

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2016 I am electronically filing the foregoing with the Clerk of the Court using the Case Management/Electronic Case Files ("CM/ECF") system, and I hereby certify that I have mailed by certified mail, return receipt requested the document to the following non-CM/ECF participant:

McClenny Moseley & Associates, PLLC
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J. Zachary Moseley
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Facsimile: (713) 322-5986

/s/ Edward F. Kaye
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